

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	

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**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION AND  
CONTINENTAL CABLEVISION, INC.**

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April 17, 1996

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Cablevision Systems Corporation ("Cablevision") and Continental Cablevision, Inc. ("Continental") submit these reply comments to the Commission's Notice<sup>1/</sup> proposing to alter its inside wiring rules.

**INTRODUCTION AND SUMMARY**

The Commission has initiated this proceeding to determine whether its cable and telephone inside wiring rules should be revised or harmonized, particularly in multiple dwelling units (MDUs).<sup>2/</sup> As emphasized by Cablevision and Continental in their initial comments, the Commission's ultimate goals must be to maximize consumer choice and promote multi-wire, facilities-based competition for all broadband services customers, including those that reside in MDUs. Uniformity between cable and telephone inside wiring rules should not be viewed as an end in itself.<sup>3/</sup> Accordingly, the Commission must shun proposals and discourage practices that thwart an MDU tenant's ability to enjoy a competitive choice between both broadband

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<sup>1/</sup>Telecommunications Services Inside Wiring; Customer Premises Equipment, Notice of Proposed Rulemaking, CS Docket No. 95-184 (released Jan. 26, 1996)("Notice").

<sup>2/</sup>Id. at ¶ 5.

<sup>3/</sup>See Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation ("Joint MSO Comments") at 29-30.

services providers and individual broadband services from different providers simply in order to further the notion of "uniformity". The comments submitted in this proceeding demonstrate that establishing a common demarcation point for cable and telephone inside wiring is neither prudent nor practicable.

Likewise, the proposals submitted to move the cable demarcation point to the first readily accessible point at which wiring is dedicated for individual unit use must be rejected, because they would diminish subscriber choice in MDUs, discourage facilities-based competition, yield inequitable and arbitrary results, and contravene Congressional intent. In fact, this proposal for revising the cable demarcation point would fail even to accomplish the uniformity sought by the Commission in the Notice. The record also demonstrates that the present cable demarcation point does not hinder the ability of competitors to deploy parallel broadband networks within MDUs.

A number of the comments submitted in response to the Notice have, however, raised important issues regarding the ability of broadband services providers to gain access to MDUs in order to serve tenants there. Cablevision and Continental support policies designed to promote customer choice of services and maximize open access to MDUs by all providers. Indeed, Cablevision and Continental are both entering the competitive local exchange business and face access issues in connection with their efforts to enter that market. It is in the consumer interest, as well as the interests of all video and telephony competitors, to reduce the ability of building owners to block the progress of telecommunications competition. Instead of imposing a counterproductive "quick fix," the Commission should therefore refrain from changing the cable demarcation point in MDUs and instead focus on developing a more detailed record regarding these broader access to property issues.

## **I. THERE IS NO NEED TO ESTABLISH A COMMON DEMARCATION POINT**

Comments submitted not only by providers of cable services, but also by providers of telephone service such as BellSouth and Pacific Bell, demonstrate that there is no current need for the Commission to establish a common demarcation point. There are clear differences between cable and telephony distribution technologies that continue to justify distinct demarcation points.<sup>4/</sup>

A number of commenters correctly noted that the inside wire policy "harmonization" sought by the Commission was premised upon premature and misguided speculation regarding the pace and direction of convergence. As BellSouth stated:

For the foreseeable future telephone and video programming services will continue to be delivered to subscribers over separate copper and coaxial intra-building facilities, notwithstanding any increased integration of network trunk facilities. With no corresponding 'integration' of intra-building telephone and cable plant, there is no technical reason for mandating a common demarcation point for these services. Furthermore, since different providers will utilize different networks to deliver their own unique service offerings, a federally-mandated common service demarcation point would impose an unnecessary technological constraint.<sup>5/</sup>

The differences between the cable and telephone demarcation points reflect practical and technical differences associated with the distribution of the respective services that are not likely to change in the foreseeable future, even as cable and telephone providers begin to enter each

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<sup>4/</sup>See, e.g., BellSouth Comments at 2-3; Pacific Bell and Pacific Telesis Video Services Comments at 2; Comments of the State of New Jersey Board of Public Utilities at 5-6; Tele-Communications, Inc. ("TCI") Comments at 2, 7; see also NYNEX Comments at 4-6 (Stating that there is "no need" for common demarcation point where telephone and cable service provided over separate facilities, noting "practical constraints on setting a common demarcation point"); United States Telephone Association Comments at 3 ("In establishing rules for the definition of demarcation points, the Commission should recognize the differences between twisted pair service facilities and those required when coaxial cable is utilized").

<sup>5/</sup>BellSouth Comments at 6-7; see also National Cable Television Association ("NCTA") Comments at 21-23; Time Warner Cable and Time Warner Communications Comments ("Time Warner") at 2.

other's businesses.<sup>6/</sup> Tellingly, even commenters that nominally support a common demarcation point acknowledge significant obstacles in establishing such a policy and concede its impracticability and undesirability in many instances.<sup>7/</sup> The absence of a consensus favoring a common demarcation point and the serious questions raised regarding the practicability of such a policy wholly undermine the rationale for the proposals set forth in the Notice.<sup>8/</sup>

It should also be noted that Congress declined to take any action with respect to harmonizing or revising the inside wiring rules applicable to cable and telephony inside wiring in the 1996 Telecommunications Act.<sup>9/</sup> Since Congress clearly grasped the factual and technological premises underlying the proposals set forth in the Notice,<sup>10/</sup> its continued

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<sup>6/</sup>See id.; see also Cox Comments at 8-12, 17-18.

<sup>7/</sup>See Ameritech Comments at 8-12; Cincinnati Bell Telephone Comments at 2-3; U S West Comments at 3-8; NYNEX Comments at 9 (supporting common demarcation point for integrated broadband services offerings but stating that "we do not believe it to be feasible to determine the exact location of the demarcation point for integrated service facilities at this time"); GTE Comments at 12 (noting need for a "unified, but flexible, network inside wire policy . . . for future broadband and integrated service offerings" that eschews reliance on "arbitrary measurement criteria in devising network demarcation policies").

<sup>8/</sup>Notice at ¶¶ 3-5; see also In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 92-260 (released January 26, 1996) ("First Order on Reconsideration") at ¶¶ 31-32.

<sup>9/</sup>See TCI Comments at 3 ("nothing in the Act or in the legislative history requires or even contemplates the harmonization of telco and cable inside wiring . . . . To the contrary, such an approach is at odds with . . . new federal policy"). In fact, Congress explicitly affirmed the difference between cable and telephony wiring by mandating that there could be no access to cable drops by telephone companies without cable operator "concurrence." See 47 U.S.C. § 572(d)(2). See discussion infra at Part II.

<sup>10/</sup>Compare e.g., Notice at ¶¶ 3-4 (noting that "telephone companies and cable operators have begun to enter each other's businesses" and that the "historically separate identities of telecommunications service providers" were breaking down) with H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 148 (1996) (noting that "initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential

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acceptance of different rules for cable and telephone inside wiring should be dispositive.<sup>11/</sup> Accordingly, the Commission should refrain from establishing a common demarcation point.

## **II. THE COMMENTERS' PROPOSALS TO EXTEND THE CABLE DEMARCATION POINT IN MDUs MUST BE REJECTED**

Some commenters would move the cable demarcation point in MDUs to the first readily accessible point where wiring is dedicated to an individual unit.<sup>12/</sup> This concept has already been rejected once by the Commission.<sup>13/</sup> Subsequent events, as well as the record in this proceeding, underscore the wisdom of retaining the existing cable demarcation point. The principal demarcation point extension proposal offered in this proceeding is not consistent with express statutory provisions adopted by Congress in the 1996 Act, thwarts subscriber choice and multi-wire, facilities-based competition, and fails to even accomplish the objectives set forth by the Commission in the Notice.

First, the 1996 Act carefully describes the conditions under which the facilities of a cable television system may be made available to other distributors. Section 652(d)(2) both reinforces

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<sup>10/</sup>(...continued)  
competition that has consistently been contemplated") and Id. at 172 (describing various means by which legislation permits telephone companies to enter cable business).

<sup>11/</sup>Indeed, if anything, the 1996 Telecommunications Act expressly repudiates the inside wiring proposals in the Notice, particularly with respect to extending the cable demarcation point. See e.g., infra at Part II; Joint MSO Comments at 28-30; TCI Comments at 3-6; NCTA Comments at 10-12.

<sup>12/</sup>See, e.g., Liberty Cable Comments at 2-3; Wireless Cable Association Comments at 11-12; DIRECTV Comments at 8; Optel Comments at 10; Multimedia Development Corp. Comments at 13-14; Pacific Bell and Pacific Telesis Video Services Comments at 3; AT&T Comments at 7; see also Media Access Project and Consumer Federation of America Comments at 10-11.

<sup>13/</sup>First Order on Reconsideration at ¶¶ 28-32.

the notion that wiring "extending from the last multi-user terminal to the premises of the end user"<sup>14/</sup> is part of the cable system transmission facilities and that access to those facilities is conditioned upon the concurrence of the cable operator. Proponents of moving the cable demarcation point, on the other hand, would have the operator involuntarily surrender those facilities. The statutory framework suggests that such wiring may only be used "with the concurrence of the cable operator"<sup>15/</sup> and then only for a limited period of time. Mandating access to the operator's transmission facilities in the MDU environment would be directly at odds with that policy. Here the access would be neither with the operator's concurrence nor would it be reasonably limited in duration.<sup>16/</sup> In short, the statutory framework precludes adoption of a regulatory policy extending the cable demarcation point to the first readily accessible point where wiring is dedicated to an individual unit.<sup>17/</sup>

Second, requiring cable operators to involuntarily surrender their homerun cables within MDUs would prevent them from reaching individual subscriber units to provide not only competing video cable services, but also other advanced services and local telephony.<sup>18/</sup> Because the extended demarcation point will obviate deployment by competitors of their own

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<sup>14/</sup>See 47 U.S.C. § 572(d)(2).

<sup>15/</sup>Id.

<sup>16/</sup>Id.

<sup>17/</sup>As noted by the Joint MSOs and other cable commenters, the proposal also would violate the 1992 Cable Act and effectuate an unconstitutional taking of cable operator property. See Joint MSO Comments at 12 n.19 and 27-28; Time Warner Comments at 11-12; NCTA Comments at 12, 36; Adelphia Communications Corporation Comments at 1-2.

<sup>18/</sup>See Joint MSO Comments at 13-14; NCTA Comments at 9; Adelphia Communications Corporation Comments at 2; Time Warner Comments at 11.



internal MDU network infrastructure, it would solidify a "one-wire" paradigm in MDUs.<sup>19/</sup> Thus, the proposal would thwart the purposes of the 1996 Act by discouraging facilities-based competition and denying subscribers a competitive choice among broadband services.<sup>20/</sup>

If the Commission adopts a policy permitting competitors to commandeer dedicated lines already deployed in MDUs, the only way cable operators could continue to offer MDU tenants advanced services such as two-way pay-per-view, Internet access and local telephony would be through making a redundant investment in MDU homerun cables. The decision to make such an investment would be highly uncertain due to the economic and practical burdens -- as well as the inequity -- associated with having to deploy redundant capacity to replace wires involuntarily surrendered to competitors. More importantly, if such redeployment is possible, then there is no reason why the competitors themselves could not deploy their own set of homeruns within an MDU.<sup>21/</sup> The fact is that multiple broadband services providers in MDUs can and do deploy their own network infrastructure within buildings.<sup>22/</sup> The proponents of extending the demarcation point are simply looking for a "quick fix" that will reduce their costs

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<sup>19/</sup>See Cox Comments at 20; TKR Cable Comments at 7; Time Warner Comments at 8.

<sup>20/</sup>See Joint MSO Comments at 6-21; Time Warner Comments at 2-4; NCTA Comments at 7-8.

<sup>21/</sup>Indeed, if such redeployment is possible then the chief argument for extending the cable demarcation point is invalid, since competitors have repeatedly claimed that the change is necessary because installing a second set of homerun wiring is impractical. See, e.g., Wireless Cable Comments at 12; GTE Comments at 9; Liberty Cable Company, Inc. Comments at 8-9.

<sup>22/</sup>See Liberty Cable marketing materials submitted with Time Warner Comments at Exhibit D; see also Time Warner Comments at 17-21. Liberty baselessly claims that Cablevision has utilized a "litigation terror tactic" designed to frustrate competition. See Liberty Cable Comments at 16 and n.24. In fact, however, Cablevision was forced to file the lawsuit cited in Liberty's comments by virtue of the fact that Liberty had intruded upon lockboxes without authorization and cut into Cablevision's conduit at an MDU in New Jersey.

of entry into the video programming business and accommodate landlords that are unwilling to provide their tenants with the ability to enjoy a competitive choice of broadband services.<sup>23/</sup>

Third, extending the cable demarcation point to the first readily accessible point where wiring is dedicated to an individual unit would fail to accomplish the objectives of "harmonization" and reduced "confusion" articulated in the Notice. The proposal would undermine the very uniformity sought by the Commission in Notice. As a practical matter, the cable demarcation point not only would remain different from telephone service, the cable demarcation point also would vary from MDU to MDU. The confusion created by such variances would be aggravated by the inevitable disputes that would arise over the location of the first "readily accessible" point where wiring is dedicated to an individual unit.

The proposal also would yield arbitrary and inequitable results. Cable operators that chiefly have deployed common wiring throughout MDUs would not be affected nearly as severely as those operators that deployed dedicated wires from a junction box outside the building. Thus, an operator's ability to retain some portion of its investment in the MDU infrastructure would vary depending upon whether it happened to have designed its facilities so as to locate its dedicated wires in MDUs in close proximity to individual units.<sup>24/</sup> The FCC

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<sup>23/</sup>The proposal supporters' inability to reconcile the discrepancy between asserting that they cannot currently deploy a second set of "homeruns" in MDUs, but that seizing the existing "homeruns" would not harm the incumbent operator's ability to compete in the broadband services market, cf., GTE Comments at 9, Independent Cable and Telecommunications Association Comments at 27, demonstrates the validity of the argument set forth below in Part III. That is, the cable demarcation point does not stifle competition in MDUs, but practices by some MDU property owners do discourage such competition. See infra at Part III.

<sup>24/</sup>If, however, notwithstanding the evidence and arguments presented here, the Commission decides to adopt some revisions to its cable demarcation point, such changes must be, as US WEST notes, prospective only. See U S WEST Comments at 6. ("For existing facilities, the ownership of existing wire, both cable and telephony should be grandfathered"). Indeed, unless  
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should not by its rules reward or punish cable operator choice of particular wiring designs, which should be dictated by technical efficiencies.

### **III. THE COMMISSION SHOULD FOCUS ON POLICIES THAT PROMOTE ACCESS TO MDUs AND EMPOWER TENANTS TO HAVE A FULL RANGE OF BROADBAND SERVICE CHOICES**

The present cable demarcation point does not hamper competition in MDUs.<sup>25/</sup> Liberty Cable itself acknowledges that it is relatively easy to deploy a second network infrastructure within MDUs, telling building owners that the "entire installation process is non-intrusive and requires minimum construction" and that Liberty "typically" installs "a parallel system that coexists with that of your present system."<sup>26/</sup> Cablevision routinely installs a parallel distribution system when it enters an MDU as the second provider of video service.<sup>27/</sup>

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<sup>24/</sup>(...continued)

the Commission specifies that any revision to the current cable demarcation point is applicable only on a prospective basis in new buildings, it is certain to be challenged as contravening not only express statutory provisions and Federal policies favoring facilities-based competition, See supra at 6, but also violating the prohibition against retroactive rulemaking, See Bowen v. Georgetown University Hosp., 488 U.S. 204, 208 (1988); Motion Picture Ass'n v. Oman, 969 F.2d 1154, 1156 (D.C. Cir. 1992), and the constitutional prohibition against takings without just compensation. See e.g., Joint MSO Comments at 12 n.19. Moreover, making such changes prospective only would be consistent with the manner by which the Commission proceeded when it changed the telephone demarcation point rules. See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Report and Order and Further Notice of Proposed Rulemaking, 5 FCC Rcd 4686, 4693; see also 47 C.F.R. § 68.3.

<sup>25/</sup>See Joint MSO Comments at 23; Time Warner Comments at 17-21. See also Liberty Cable Comments at 18 (indicating that Liberty provides service to 130 buildings in Manhattan in competition with Time Warner).

<sup>26/</sup>See Time Warner Comments at Exhibit D. Liberty also states that the new wiring it deploys "takes just days to install, is invisible to residents, and does not interfere with any existing electrical or cable service." Id.

<sup>27/</sup>Joint MSO Comments at 23.

While the existing cable demarcation point does not stifle competition in MDUs, cable operators such as Cablevision and Continental as well as their competitors encounter resistance from landlords and property owners that seek to deny their tenants an opportunity for competitive choice in broadband services.<sup>28/</sup> Property owners may seek to restrict competition because they reap financial benefits from exclusivity, or simply for the sake of convenience.<sup>29/</sup>

The Commission's preeminent policy goal must be to promote facilities-based competition, not to minimize inconvenience to building owners or to maximize landlords' ability to enter into lucrative exclusive contracts.<sup>30/</sup> To that end, the Commission should focus on promoting the deployment of multiple broadband pathways in MDUs, not on forcing cable operators to surrender their existing MDU network infrastructure. The telecommunications future should not be brought to a standstill because building owners want only one video provider in their building, or only one telephony provider.

Ironically, a number of competitors that have complained about restrictions on their ability to obtain access to MDUs have offered proposals that would actually strengthen landlords' ability to act as broadband services gatekeepers within their buildings. The Wireless Cable

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<sup>28/</sup>See, e.g., Wireless Cable Association Comments at 7 (noting that "structural limitations, fear of property damage and related aesthetic considerations often discourage an MDU property owner from allowing multiple providers onto his or her property"); Cable Telecommunications Association Comments at 8-10; Liberty Cable Comments at 8, 18 (describing landlord resistance to deployment of second hallway molding systems); NCTA Comments at 15-21.

<sup>29/</sup>See, e.g. Cox Comments at 27; Marcus Cable, et. al. Comments at 8-9; NCTA Comments at 16-19.

<sup>30/</sup>While comments submitted by building owners and real estate interests in this proceeding acknowledge the importance of consumer access to competitive alternatives, at the same time such commenters generally propose policies that would frustrate this end by empowering landlords to limit the ability of broadband service providers to deploy competing networks within their buildings. See, e.g., MarRay-PCP 1500, Inc. Comments at 1-2; Building Owners and Managers Association of Greater Miami, Inc. Comments at 2; Haygood Management Company Comments at 1-2.

Association and MultiMedia, for example, argue that the Commission should preempt existing State and local access laws that provide cable operators with a right to offer MDU tenants a competitive choice of multichannel video programming services providers.<sup>31/</sup> The preemption of existing access laws would only strengthen the power of landlords to make both service and provider choices for the tenants by resurrecting their power to engage in exclusive contracts.<sup>32/</sup> The solution to the problem of restricted access is not to eliminate laws that promote access. Instead, Cablevision and Continental urge the Commission to consider measures aimed at broadening service provider access to MDUs.

In a similar vein, some competitors have suggested not only that the FCC extend the cable demarcation point to the first readily accessible point where wiring is dedicated to an individual unit, but also that it mandate that all common wiring within an MDU be transferred to the property owner upon installation.<sup>33/</sup> Apart from the significant constitutional, valuation, technical and statutory issues that have already been raised that compel rejection of such a proposal,<sup>34/</sup> requiring cable operators to surrender existing common wiring within MDUs to

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<sup>31/</sup>Wireless Cable Comments at 8-9; MultiMedia Comments at 3-7; OpTel Comments at 3-8.

<sup>32/</sup>OpTel expressly argues in favor of promoting exclusive contracts between building owners and service providers. Id. at 7.

<sup>33/</sup>See Wireless Cable Association Comments at 15-16; MultiMedia Comments at 14-15. DIRECTV has suggested that existing cable operators serving MDUs should be forced to share wiring running from the pole to "the head-end of the MDU wiring plant." DIRECTV Comments at 8-9. Riser Management Systems has suggested that competing service providers share "a common backbone cable distribution system within a building." Riser Management Systems Comments at 4. Apart from the constitutional and statutory defects associated with forcing cable operator's to share common feeder transmission facilities outside and within MDUs, see supra at 6 n.17, the Commission has already properly concluded that sharing of broadband wiring by multiple providers is both technically and economically impracticable. First Order on Reconsideration at ¶ 10.

<sup>34/</sup>See Joint MSO Comments at 11-12, n. 19, 24-29.

building owners would be tantamount to establishing a de facto Federal policy granting landlords the authority to enter into exclusive contracts with service providers.<sup>35/</sup>

A property owner essentially would be empowered to "auction" MDU common wiring to the highest bidder. It could then enforce the exclusivity awarded to the highest bidder through its authority to assume control over any other common wiring that a competitor might wish to deploy within that building. In this scenario, a tenant's ability to assume ownership over its home wire is meaningless since it is effectively stripped of the power to choose between competing service providers.

The result of these proposals would be even more detrimental than the extended demarcation point proposal discussed above in Section II, which thwarts competition by preventing MDU tenants from making individualized broadband services choices and instead requiring them to make a single "all-or-nothing" choice between broadband services providers.<sup>36/</sup> The proposals to strengthen the power of property owners go farther, however, since they effectively deny tenants the opportunity to make even the "all-or-nothing" choice between providers.

Property owners should not have the ability -- either on a de jure or de facto basis -- to limit their tenants' choice of providers or services. The comments in this proceeding demonstrate a need for the FCC to examine in detail access to property issues, with an eye toward promoting policies aimed at promoting open access to MDUs for all broadband services providers. This examination should, however, be decoupled from proposals to change the

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<sup>35/</sup>If this proposal is coupled with the suggestion to preempt existing state access laws, as advocated by Wireless Cable and MultiMedia, it would move closer to a de jure policy favoring exclusivity in MDUs.

<sup>36/</sup>See also Joint MSO Comments at 3-4, 12-13.

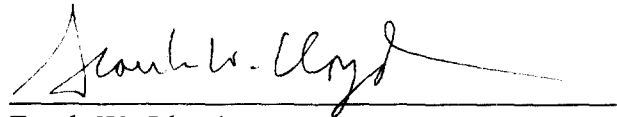
demarcation point. The FCC must reject those proposals since they would thwart subscriber choice, discourage multi-wire, facilities-based competition and fail to address the real source of any existing barriers to competition in MDUs.

### CONCLUSION

For the foregoing reasons, the Commission should retain its current cable and telephone inside wiring rules without change and focus its efforts on legitimate concerns raised in this docket about access to building premises and landlord blockage of facilities-based competition in both video and telephony.

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April 17, 1996  
F1/51907.1